

PUBLIC REVIEW DRAFT

Planning Agreement

by and among

**the County of Santa Clara, the Santa Clara Valley Water
District, the City of San Jose, the Santa Clara Valley
Transportation Authority,
the California Department of Fish and Game,
and the United States Fish and Wildlife Service**

regarding the

**Santa Clara Valley
Natural Community Conservation Plan
and Habitat Conservation Plan**

**Draft
March 14, 2005**

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Santa Clara Valley HCP/NCCP Planning Agreement

This planning agreement (“Planning Agreement” or “Agreement”) regarding the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan (“Plan”) is entered into as of the Effective Date by and among the County of Santa Clara a political subdivision of the State of California (“County”), the City of San Jose, a municipal corporation (“City”), the Santa Clara Valley Water District, a public entity (“Water District”), the Santa Clara Valley Transportation Authority, a public entity (“VTA”), the California Department of Fish and Game (“DFG”), and the United States Fish and Wildlife Service (“USFWS”). These entities may be referred to collectively in this Agreement as “Parties” and each individually as a “Party.” The County, City, Water District and VTA may be referred to collectively in this Agreement as the “Local Agencies.” The DFG and USFWS may be referred to collectively in this Agreement as “Wildlife Agencies.”

1. Definitions

Terms used in this Agreement that are defined in CESA, FESA or NCCPA will have the meanings set forth therein as of the date of this Agreement unless otherwise indicated in this Agreement. The following terms as used in this Agreement will have the meanings set forth below:

1.1. “CEQA” means the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.*

1.2. “CESA” means the California Endangered Species Act, California Fish and Game Code Section 2080 *et seq.*

1.3. “City” means the City of San Jose, a municipal corporation.

1.4. “County” means the County of Santa Clara, a political subdivision of the State of California.

1.5. “Covered Activities” means the activities that will be addressed in the Plan and for which Local Agencies will seek an NCCPA take permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 of FESA.

1.6. “Covered Species” means those listed and unlisted plant and animal species that are covered in the Plan and for which take permits may be issued in accordance with this Agreement.

1.7. “DFG” means the California Department of Fish and Game.

1.8. “FESA” means the federal Endangered Species Act, 16 U.S.C. Section 1530 *et seq.*

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1.9. “Habitat Conservation Plan” or “HCP” means a plan prepared pursuant to Section 10(a)(2)(A) of FESA and regulations promulgated pursuant thereto..

1.10. “HCP/NCCP Management Team” means, collectively, the staff person(s) identified by each Local Agency to represent the Local Agency’s interests during Plan development. This Team will provide collective guidance and decision making on behalf of the Local Agencies regarding Plan development, as set forth in the Memorandum of Understanding between the Local Agencies; however, the Plan and associated CEQA documents must be approved by the governing bodies of the Local Agencies.

1.11. “Listed Species” means plant or animal species that are listed as threatened or endangered pursuant to CESA and/or FESA.

1.12. “Local Agencies” means, individually or collectively, the County of Santa Clara, the City of San Jose, the Santa Clara Valley Water District, and/or the Santa Clara Valley Transportation Authority.

1.13. “NCCP” means a natural community conservation plan prepared pursuant to the Natural Community Conservation Planning Act, California Fish and Game Code Section 2800 *et seq.*

1.14. “NCCPA” means the Natural Community Conservation Planning Act, California Fish and Game Code Section 2800 *et seq.*

1.15. “NEPA” means the National Environmental Policy Act, 14 U.S.C. section 4321 *et seq.*

1.16. “NOAA” means the National Oceanic and Atmospheric Administration.

1.17. “Parties” means the signatories to this agreement.

1.18. “Plan” means the joint natural community conservation plan and habitat conservation plan.

1.19. “Planning Area” means the geographic area that the Local Agencies intend to cover in the Plan.

1.20. “USFWS” means the United States Fish and Wildlife Service.

1.21. “VTA” means the Santa Clara Valley Transportation Authority, a public entity.

1.22. “Water District” means the Santa Clara Valley Water District, a public entity.

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1.23. “Wildlife Agencies” collectively refers to DFG and USFWS.

2. Background

2.1. Purposes of Planning Agreement

The purposes of this Agreement are to:

- Define the Parties’ goals and obligations with regard to development of a legally sufficient and approvable Plan that will form the basis for take permits for Covered Activities;
- Define the preliminary geographic scope of the Planning Area;
- Identify a preliminary list of natural communities and species expected to be found in those communities that are intended to be the initial focus of the Plan;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the Plan development process;
- Ensure coordination among the Local Agencies and Wildlife Agencies;
- Establish an interim process during Plan development that encourages conditions conducive to achieving the preliminary conservation objectives;
- Establish a process for public participation and outreach; and
- Encourage concurrent planning for wetlands and waters of the United States.

2.2. Regulatory Goals

The Local Agencies intend that the Plan will allow for development and growth compatible with the Plan’s goals and consistent with State and federal regulatory requirements. By agreeing to assume responsibility for development of the Plan, and committing staff and financial resources for that purpose, the Local Agencies intend for the Plan to yield numerous benefits in addition to natural resource conservation, including greater regulatory efficiency, streamlining and certainty.

2.2.1. Compliance with CESA and FESA

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA and/or FESA. The Parties intend to develop a Plan that satisfies the requirements for an HCP under Section 10 of FESA (16 U.S.C., § 1539) and an NCCP under the NCCPA. The Plan is intended to serve as the basis for take authorizations pursuant to section 10(a) of FESA and section 2835 of the NCCPA. The NCCPA provides that, after the approval of an NCCP, DFG is authorized to permit the taking of any identified species, both listed and non-listed, whose conservation and management is provided for in the NCCP. Take authorization for state-listed species during the interim period shall be provided

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pursuant to CESA. After approval of the Plan, take authorization will be provided pursuant to the NCCPA and FESA.

2.2.2. Compliance with Other Laws

The Parties intend that the Plan will be prepared in compliance with all federal, state and local laws and regulations. The Parties expect that the Plan may facilitate permitting or approvals pursuant to other environmental regulations implemented by other regulatory agencies, such as laws and regulations related to impacts to waters of the United States.

2.2.3. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the Plan, once approved by the USFWS or NOAA Fisheries and included as a condition of federal incidental take permits to the Local Agencies, will be incorporated into future Section 7 consultations between the USFWS or NOAA Fisheries and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect Covered Species or their habitat. The Parties expect that inclusion of the Plan's mitigation and minimization measures into future Section 7 consultations regarding Covered Activities will streamline the consultation process because the USFWS would have already determined that the Plan's mitigation and minimization measures for the Covered Activities comply with FESA.

2.2.4. Assurances

The Parties intend that the USFWS will provide regulatory assurances to applicants for FESA permits pursuant to the Plan consistent with their regulatory authority upon issuance of incidental take permits pursuant to the Plan. Specifically, the Parties intend that, if the HCP meets the criteria for issuance of an incidental take permit under Section 10 of FESA, the Applicants will receive the assurances in the "no surprises" regulations of the United States Department of the Interior currently set out at 50 C.F.R. 17.22(b)(5), and 17.32(b)(5) and the United States Department of Commerce currently set out at 50 C.F.R. 222.3 and 222.22, as of the date of this Agreement for all species adequately covered under the HCP. Such assurances would be provided upon approval of the HCP and issuance of incidental take permits pursuant to the HCP.

The Parties recognize that the "no surprises" regulations are the subject of continuing litigation, and that the current regulations must be considered as part of a larger remand order regarding the FWS's permit revocation rule. The Parties further recognize that "no surprises" assurances may not become available prior to completion of Plan development; and the Parties are not proceeding with Plan development in reliance of having such assurances. To the extent that such assurances are available at the time of permit issuance, or may become available in the future, the FWS will work with

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the Local Agencies to provide such assurances to the fullest extent allowable by statute and regulation.

In addition, the Parties intend that if the NCCP meets the criteria for a NCCPA take permit under Section 2835 of the Fish and Game Code, DFG will provide regulatory assurances to the fullest extent consistent with its statutory authority upon approval of the Plan and issuance of NCCPA take permits to the Local Agencies. Pursuant to Section 2820(f) of the Fish and Game Code, assurances provided by DFG will be commensurate with long-term conservation assurances and associated implementation measures. In order to ensure that Plan assurances are formal, reliable, and legally binding, such provisions will be included in implementation agreements.

2.3. Planning Goals

The planning goals include the following:

- Allow appropriate compatible growth and development to the extent consistent with applicable laws;
- Provide a basis for permits and authorizations necessary to lawfully take species listed as threatened or endangered pursuant to FESA and/or CESA;
- Provide a process for issuance of take authorizations for Covered Species that are not currently listed but that may be listed in the future without imposing additional mitigation requirements not provided in the approved Plan;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, NCCPA and other applicable laws and regulations relating to biological and natural resources within the Planning Area so that public and private actions will be governed equally and consistently, thus reducing delays, expenses and regulatory duplication;
- Provide a less costly, more efficient project review process which results in greater conservation values than the current project-by-project, species-by-species review and regulatory regime; and
- Provide take authority for covered activities related to the need for uninterrupted water supply, flood protection and watershed activities to the extent consistent with applicable laws.

2.3.1. Consistency with Existing County and City Programs.

The Parties recognize that the Plan is intended to provide the framework for compliance with FESA and the NCCPA and agree that the Plan will be based on the Local Agencies' existing programs to the extent those programs are consistent with the requirements of federal and state law. The Parties recognize that the Local Agencies' programs are not specifically intended to fulfill the State and federal regulatory requirements that may apply to Covered Activities. The Parties therefore anticipate that the Plan may contain some

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measures, standards or requirements that are not specifically identified in the Local Agencies' existing documents.

2.3.2. Departure from Project-by-Project Planning Approach.

The Parties agree that the process of undertaking habitat conservation planning on a project-by-project basis is costly and inefficient. All Parties assume that the development of a successful Plan will be a less expensive and more efficient and effective method of complying with the species conservation requirements of FESA and NCCPA than through a project-by-project approach. A successful Plan will also provide a method for a less expensive and more efficient environmental review process for NEPA and CEQA. The Parties also agree that a successful Plan can be better for both habitat conservation and economic development than through individual project permitting.

2.3.3. Covered Activities

Covered Activities under the Plan are those activities that may result in take of Covered Species that will be identified and addressed in the Plan and authorized by take permits issued as a result of the approved Plan. Covered Activities under the Plan include Water District water supply, flood protection and watershed activities and those land uses and development activities that the Local Agencies undertake or over which they have land use or other regulatory authority, and may also address certain agricultural activities and adaptive habitat management and monitoring activities in the Planning Area. The Parties intend that the Plan will allow Covered Activities in the Planning Area to be carried out in compliance with NCCPA and FESA.

2.3.4. Natural Communities and Covered Species

The Parties intend for the Plan to address the impacts of taking that may result from Covered Activities in the Planning Area on natural communities, on covered endangered and threatened species listed under FESA or CESA, and on other Covered Species that are currently unlisted. The purpose of addressing unlisted species will be to provide for the conservation and management of those species, and to help prevent such species from becoming listed as threatened or endangered under FESA or CESA. Addressing unlisted species in the Plan is also intended to avoid the need to develop new and different measures or restrictions to mitigate for impacts should such species become listed in the future because an approved NCCP authorizes the issuance of take permits for such species. It is also the goal to include, at a minimum, measures sufficient to enable USFWS to issue incidental take permits or otherwise authorize take in the event additional species are listed and subject to the "take" prohibition. A preliminary list of natural communities, and the endangered, threatened, candidate, or other species known, or reasonably expected to be found, in those communities, that are intended to be the initial focus of the Plan is attached as Exhibit A. While Exhibit A identifies the species that the Local Agencies and Wildlife Agencies

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will initially evaluate for inclusion in the Plan, it does not necessarily represent the Plan's final Covered Species list.

3. Planning Area and Participating Parties

3.1. Geographic Area

The Planning Area contains those portions of the Coyote and Uvas/Llagas Watersheds depicted on Exhibit B and further described in Section 5.1.4.1. This geographic area is preliminary and may be modified during Plan development to achieve the planning goals in Section 2.4.

3.2. Local Sponsors

The Local Agencies are the local sponsors of the Plan. As part of this planning process, the Local Agencies have committed to undertake a collaborative, systematic approach to protecting the ecologically significant resources, including certain rare, threatened and endangered species and their habitats, open space, and agricultural lands within the Planning Area, and to ensure that the Covered Activities comply with applicable federal, State and local environmental laws.

3.3. California Department of Fish and Game

DFG is the agency of the State of California authorized and empowered to act as trustee for wildlife (as defined in Fish and Game Code Section 711.2) of the State on behalf of its residents. DFG is authorized to develop NCCPs pursuant to the NCCPA, to enforce the terms of the CESA, to issue take permits, and to enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

3.4. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior and is authorized and empowered by Congress to implement and enforce the FESA, enter into agreements with States, local governments, and other entities to conserve threatened, endangered, and other species of concern, and issue take permits. This Agreement requires coordination with federal Wildlife Agencies with respect to FESA.

4. Preliminary Conservation Objectives

The preliminary conservation objectives of the Plan are to:

- Preserve the diversity of plant and animal communities within the Planning Area;
- Protect Covered Species within the Planning Area;
- Identify and designate biologically sensitive habitat areas;
- Conserve habitat, and thereby contribute to the recovery of threatened, endangered and other identified plant and animal species within the Planning Area;
- Reduce the need to list additional species;

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- Set forth specific habitat-based goals and objectives expressed in terms of amount and quality of habitat;
- Determine the extent of impacts to species from incidental take caused by Covered Activities; and
- Provide an effective adaptive management and monitoring strategy for Covered Species and natural communities that is consistent with the NCCPA, FESA, and regulations promulgated thereunder.

5. Planning Process

The Parties intend that this Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing a Plan that fulfills the requirements of the NCCPA and FESA.

5.1. NCCPA Planning Process for the Santa Clara Valley HCP/NCCP

The process used to develop the Plan will incorporate independent scientific input and analysis, and public participation to ensure that the general public, as well as key stakeholders, have sufficient opportunity for comment.

5.1.1. Natural Communities

The Plan will provide for conservation of ecosystems, habitats, and ecosystem function to ensure conservation of biological diversity of the natural communities in the Planning Area. A preliminary list of natural communities in the Planning Area is included in Exhibit A.

5.1.2. Covered Species

The preliminary list of Covered Species is attached hereto as Exhibit A.

5.1.3. Best Available Scientific Information

Pursuant to the NCCPA and FESA, the Plan will be based on the best available scientific information, including:

- Principles of conservation biology, community ecology, landscape ecology, individual species' ecology, and other scientific knowledge and thought;
- Advice from well-qualified, independent scientists.

5.1.4. Data Compilation and Collection

Many data have already been collected that will be valuable to development of the Plan, and the Parties agree that these existing data will be considered even if the data were not collected in accordance with recognized survey protocols. The science advisory process and analysis of existing information may reveal data gaps currently not known, that are necessary for the full and accurate development of the Plan. Data needed for the preparation of the Plan may not be known at this time nor identified herein. The Parties also agree that data collection needs for preparation of the Plan should be prioritized to develop more complete information on these subjects. Preference should be given to the data essential to address conservation requirements of the Covered

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Species and natural communities. If additional data collection is necessary, the parties will first consider protocols approved by the Wildlife Agencies. Any deviation from these Wildlife Agency-approved protocols will be agreed to by all Parties. Data collected for the preparation and implementation of the Plan will be made available to the Wildlife Agencies in hard and digital (where available) formats, as requested.

5.1.4.1. Description of Planning Area

The Planning Area is 688 square miles and covers approximately half of Santa Clara County as depicted in Exhibit B attached hereto. The Planning Area boundaries generally coincide with the Coyote Watershed (excluding the most northern area) and the Uvas/Llagas Watershed located within Santa Clara County. The Planning Area generally covers the southeastern portion of the county including portions of the Santa Cruz Mountains to the west, the central portion of the Santa Clara Valley, and portions of the Diablo Range to the east. A majority of the Planning Area is unincorporated, but portions are within the Cities of San Jose, Morgan Hill and Gilroy. The Planning Area encompasses a diversity of land uses, including a variety of urban and suburban development types, agriculture uses and ranchlands, rural residential, recreation, and public and private open space. It also contains diverse natural community types, including a variety of grasslands, serpentine, oak woodlands, mixed riparian forests, scrub/chaparral, marshes and other aquatic areas. A preliminary list of the natural communities as well as covered species typically found in these communities is in Exhibit A attached hereto.

5.1.5. Independent Scientific Input

The DFG and Local Agencies intend to include independent scientific input and analysis to assist in the preparation of the Plan. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology and locally-relevant ecological knowledge, will, at a minimum:

- recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the Plan;
- recommend a set of reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes in the Planning Area proposed to be addressed by the Plan;
- recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the Plan; and
- identify data gaps and uncertainties so that risk factors can be evaluated.

The independent scientists may be asked to provide additional feedback on key issues during preparation of the Plan, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the DFG and Local Agencies.

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Design and implementation of the science advisory process must be done in a coordinated fashion and with the mutual agreement of the DFG and Local Agencies. The DFG and Local Agencies will establish funding and payment procedures. The independent science advisory process will include the development of a detailed scope of work, use of a professional facilitator, input from technical experts, and production of a report by the scientists. In addition, the DFG and Local Agencies will make the report available for use by all participants and the public during the planning process.

5.1.6. Public Participation

The Plan will be prepared in an open and transparent process, with input from concerned citizens. The process used to prepare the Plan will provide opportunities for public review and comment, and include a working group that will review the Plan at every major stage of development. To assist in the development of the Plan, the Local Agencies will form a Stakeholder/Public Group. With regard to the preparation of the Plan, the Parties hereto understand that:

- Plan preparation will be guided by a group of stakeholders, each of whom have a stake or interest in the outcome of the Plan;
- The stakeholder group will include and utilize representatives of local and state government agencies, civic and business interests and organizations, agricultural and industry associations, environmental groups, resource conservation and land management groups, professional and trade organizations, and the general public. The Local Agencies will confirm the stakeholder group representatives and a schedule for their consideration of the HCP/NCCP documents. The general public will be allowed to attend the stakeholder group meetings and to listen to the proceedings. Agendas and minutes of the stakeholder group meetings will be available on the HCP/NCCP website;
- The number of stakeholders participating in the stakeholder group will be balanced to adequately represent a cross-section of the various interest groups and to be manageable and effective;
- The process for selecting and approving stakeholder membership will be determined by the Local Agencies with input from the Wildlife Agencies;
- The stakeholder group will constitute the core group for input into Plan preparation and will use a collaborative approach to assist in the preparation of the Plan;
- The Stakeholder/Public Group will be convened at least quarterly, and more often as needed, to review and comment on Plan material at critical stages in the process; and
- Stakeholder subgroups may be established to review specific portions of Plan work and conduct outreach as necessary and appropriate.

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5.1.6.1. Outreach

The Local Agencies will develop a process for providing access to information for persons interested in the Plan, with an emphasis on obtaining input from a balanced variety of public and private interests including State and local governments, landowners, conservation organizations, agricultural interests, and the general public. The Parties expect and intend that public outreach regarding preparation of the Plan will be conducted largely by and through the Stakeholder/Public Group coordinated by the Local Agencies' HCP/NCCP Management Team. In addition, the Local Agencies will continue to hold public meetings at key points in the process (e.g., to solicit input on CEQA/NEPA documents; present key decisions regarding the preparation of the Plan) in order to afford the public the opportunity to comment on and inquire about such documents and decisions. Other outreach efforts will include development of a Plan website and development and maintenance of an interested party mailing list (electronic or paper) for distribution of key Plan documents and other informational updates. The Local Agencies will also seek input from the Stakeholder/Public Group regarding additional public outreach efforts.

5.1.6.2. Availability of Public Review Drafts

The Local Agencies will comply with all legal requirements regarding public notice, review and comment related to documents associated with the Plan, including but not limited to any such requirements in the NCCPA, FESA, CEQA and NEPA. The Local Agencies will designate as "public review drafts" various pertinent documents drafted during preparation of the Plan and will make these documents available to the public. The Parties agree that the internet will be used to make documents pertaining to the Plan available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

5.1.6.3. Public Hearings

Public hearings regarding the Plan development and/or approval will be planned and conducted to complement or integrate with hearings otherwise required by law.

5.1.7. Interim Project Processing

The Parties recognize that, before the Wildlife Agencies approve the Plan, certain projects and activities that must comply with FESA and/or CESA, that may potentially conflict with the preliminary conservation objectives in this Agreement may be proposed within the Planning Area. The Parties agree to the following Interim Project Process to (1) ensure coordination regarding development, construction or other projects or activities approved or initiated in the Planning Area before completion of the Plan to help achieve the preliminary conservation objectives and not preclude important conservation planning

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options or connectivity between areas of high habitat values; (2) facilitate CESA and FESA compliance for interim projects that require it; and (3) ensure that interim projects are not unduly delayed due to preparation of the Plan.

5.1.7.1. Reportable Interim Projects

The Local Agencies will notify the Wildlife Agencies pursuant to section 5.1.7.2 about proposed development, construction or other projects or activities undertaken by or requiring discretionary permits pursuant to CEQA from the Local Agencies that have the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives contained in Section 4 of this Agreement and for which the lead Local Agency determines that a Mitigated Negative Declaration or EIR must be prepared for the project ("Reportable Interim Projects").

5.1.7.2. Notification Process

The Local Agency proposing to undertake or approve a Reportable Interim Project shall notify the Wildlife Agencies of the project as soon as possible after the application for the project is deemed complete pursuant to Government Code Section 65943 or within 30 days of its determination that a Mitigated Negative Declaration or EIR must be prepared for the project, whichever is earlier. The Local Agency shall notify the particular individuals designated by the Wildlife Agencies to be notified of Reportable Interim Projects, and where appropriate shall provide these designated individuals with (1) a depiction of the project location on a regional context map identifying major streets and highways and an aerial photo of the site and surrounding area; and (2) a description of the project along with land cover types present on the project site using the most current land cover data available to the Local Agency; and (3) any other biological information available to the Local Agency about the project area.

5.1.7.3. Wildlife Agencies Review

The Wildlife Agencies shall review Reportable Interim Projects in a timely manner, and shall provide any comments on the projects (*e.g.*, comments on scoping, draft Mitigated Negative Declaration or EIR or EIS) to the referring Local Agency and lead federal agency, if any, within the legally prescribed comment periods. The Wildlife Agencies' comments shall recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values.

5.1.7.4. Coordinating Interim Process with Plan Preparation

Representatives of the Parties will meet as needed to discuss interim projects and coordination with development of the Plan. The Parties will also periodically confer to determine how scientific input and analysis

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developed during Plan preparation or provided through the science advisory process should be incorporated into the Interim Project Process. The Parties agree that potential conflicts with the preliminary conservation objectives shall be identified during the Interim Process to help achieve the preliminary conservation objectives, not preclude important conservation planning options or connectivity between areas of high habitat values, and help guide and ensure development of a successful Plan that incorporates these interim projects.

5.1.7.5. Coyote Valley Specific Plan

The Coyote Valley Specific Plan ("CVSP") will cover approximately 7,100 acres at the extreme south edge of the City of San Jose consisting of the North Coyote Valley Campus Industrial area, the Coyote Valley Urban Reserve and the Coyote Greenbelt. A map depicting the CVSP area is attached hereto as Exhibit C. The City anticipates that the CVSP will supply a minimum of 25,000 homes and 50,000 jobs in an urban pedestrian-oriented community. Because the Plan may not be completed before the City of San Jose takes action on the CVSP, the City of San Jose may seek approval for the CVSP pursuant to FESA Section 7. Any CVSP Section 7 shall adequately compensate for all direct and indirect effects from the action, and the CVSP will not preclude the development of a viable conservation strategy for the Plan. Consequently, the Parties agree and acknowledge that the CVSP is an Interim Project under this Agreement and that the CVSP and its implementation will not be delayed by development of the Plan.

5.1.8. Related Projects

5.1.8.1. Fisheries and Aquatic Habitat Collaborative Effort ("FAHCE")

The Water District, Wildlife Agencies, and NOAA are parties to a settlement agreement to resolve a water rights challenge filed with the California State Water Resources Control Board in July 1996. Under the settlement agreement, the Water District agreed to undertake certain actions, including development of a conservation strategy for the three creeks subject to the settlement, preparing the necessary CEQA and NEPA documents for the conservation strategy, and obtaining any necessary FESA permits to implement the conservation strategy. The Water District, Wildlife Agencies, and NOAA also agreed to incorporate the conservation strategy for the three creeks into a countywide HCP.

5.1.9. Protection of Habitat Land During Planning Process

5.1.9.1. Conservation Lands Acquired/Protected

The Parties may elect to preserve, enhance or restore, either by acquisition or other means (e.g., conservation easements; designated setbacks or "no build" zones), lands in the Planning Area that contain native species of wildlife or natural communities prior to the completion or

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approval of the Plan. The Local Agencies will consult with the Wildlife Agencies regarding potential lands to be protected. Upon approval of the Plan, the Wildlife Agencies agree to credit such lands toward the land acquisition or habitat preservation requirements of the Plan, if, and to the extent, the lands contribute to the Plan's conservation strategy. The Wildlife Agencies will not refuse to credit toward a Plan conservation obligation any lands determined by the Wildlife Agencies to be biologically suitable for the Plan solely on the basis that the lands were acquired or preserved prior to completion of the Plan.

5.1.9.2. Mitigation Lands

Lands, or portions of lands, protected solely to mitigate the impacts of specific projects or activities that occur prior to or during plan preparation will only be considered as mitigation for the resulting loss from those projects. Such lands will also be considered as part of the Plan analysis, but will not count toward future mitigation obligations of the Plan. Mitigation credit will count only once.

5.2. FESA Planning Requirements

FESA's requirement for public participation in the development of habitat conservation plans is a minimum 30-day public comment period for all draft habitat conservation plans. (16 U.S.C.A. § 1539(c); 50 C.F.R. Part 17 and Part 222.) However, in conformance with the federal HCP Handbook and the 5 Point Policy, the USFWS customarily allows for public comment periods of 60 days, 90 days, or even longer, depending on the scale and complexity of individual habitat conservation plans. Further, the issuance of incidental take permits by the USFWS is a federal action subject to the requirements of NEPA, which similarly requires a minimum 45 to 60 day public review period for all major federal actions significantly affecting the quality of the human environment. For large-scale, regional, or exceptionally complex habitat conservation plans, the USFWS encourages plan preparers to use informational meetings and external review teams. It is the policy of the USFWS to allow a minimum 90-day public comment period for such habitat conservation plans, unless there is significant public participation during their development.

6. Commitment of Resources

6.1. Funding

6.1.1. Local Funding

The Local Agencies recognize that, as a prospective applicant for State and federal permits, they have the primary responsibility for developing a plan that meets applicable legal requirements and that, as a result, the development and implementation of the Plan must be funded primarily from locally derived sources.

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6.1.2. DFG Assistance with Funding

DFG agrees to assist and cooperate with the other Parties in identifying and securing, where appropriate, federal, State and other funds for natural community conservation planning and habitat conservation planning purposes. The Parties agree that Local Agencies are not required to reimburse DFG for its participation in the planning phase of the Plan as provided in Fish and Game Code Section 2810. DFG's commitments and obligations under this Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative.

6.1.3. USFWS Assistance with Funding

The USFWS agrees to assist and cooperate with the Local Agencies in identifying and securing federal, State and other funds for habitat conservation planning purposes. Potential federal funding sources include, but are not limited to: the USFWS' Cooperative Endangered Species Conservation Fund, the Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture or Transportation. The commitments and obligations of the USFWS under this Agreement are subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. The Parties acknowledge that this Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

6.2. Technical Assistance from Wildlife Agencies

The Wildlife Agencies agree to provide timely evaluation of interim projects, technical and scientific information, and analyses and advice to assist the Local Agencies with the timely and efficient development of the Plan, provided the Local Agencies give the Wildlife Agencies quality data and sufficient time for review.

7. Miscellaneous Provisions

7.1. Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

7.2. Statutory Authority

The Parties will not construe this Agreement to require any Party to act beyond, or inconsistent with, its statutory authority.

7.3. Counterparts

This Agreement may be executed by the Parties in several counterparts, which together will constitute an official original copy.

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7.4. Effective Date

The Effective Date of this Agreement will be the date on which it is executed by all of the Wildlife Agencies and all of the Local Agencies.

7.5. Duration

This Agreement will be in effect until the Plan is approved by the Wildlife Agencies, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment or terminated.

7.6. Amendments

This Agreement can be amended only by written agreement of all Parties.

7.7. Termination and Withdrawal

Any party may withdraw from this Agreement upon 30 days' written notice. This Agreement can be terminated only by written agreement of all Parties.

7.7.1. Funding

In the event that grant funds have been awarded to a withdrawing Party for the Plan preparation or implementation, the withdrawing Party shall return any unspent grant funds to the grantor within 30 days of withdrawing, and provide the remaining Parties with a complete accounting of the use of the grant funds.

SIGNATURES:

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<p>APPROVED AS TO FORM:</p> <p>By: _____ MICHAEL R. VALENTINE</p> <p>Its: General Counsel</p> <p>Date: _____</p>	<p>“CDFG”</p> <p>CALIFORNIA DEPARTMENT OF FISH AND GAME</p> <p>By: _____ BANKY CURTIS</p> <p>Its: Deputy Director, Habitat Conservation Division</p> <p>Date : _____</p>
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	<p>“USFWS”</p> <p>UNITED STATES FISH AND WILDLIFE SERVICE</p> <p>By: _____ WAYNE WHITE</p> <p>Its: Field Supervisor</p> <p>Date: _____</p>
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<p>ATTEST:</p> <p>By: _____ PHYLLIS A. PEREZ</p> <p>Its: Clerk of the Board</p> <p>Date : _____</p> <p>APPROVED AS TO FORM AND LEGALITY:</p> <p>By: _____ LIZANNE REYNOLDS</p> <p>Its: Deputy County Counsel</p> <p>Date: _____</p>	<p style="text-align: center;">“COUNTY”</p> <p>COUNTY OF SANTA CLARA, a political subdivision of the State of California</p> <p>By: _____ LIZ KNISS Chair, Board of Supervisors</p> <p>Date: _____</p>
<p>APPROVED AS TO FORM:</p> <p>By: _____ RENEE A. GURZA</p> <p>Its: Senior Deputy City Attorney</p> <p>Date: _____</p>	<p style="text-align: center;">“CITY”</p> <p>CITY OF SAN JOSE, a municipal corporation</p> <p>By: _____ LEE PRICE</p> <p>Its: City Clerk</p> <p>Date: _____</p>
<p>APPROVED AS TO FORM:</p> <p>_____ Its: Counsel</p> <p>Date: _____</p>	<p style="text-align: center;">“VTA”</p> <p>SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public entity</p> <p>By: _____ PETER M. CIPOLLA</p> <p>Its: General Manager</p> <p>Date: _____</p>

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<p>APPROVED AS TO FORM:</p> <p>By: _____ EMILY J. COTE</p> <p>Its: Assistant District Counsel</p> <p>Date: _____</p>	<p>“WATER DISTRICT”</p> <p>SANTA CLARA VALLEY WATER DISTRICT, a public entity</p> <p>By: _____ RICHARD P. SANTOS</p> <p>Its: Chair of the Board of Directors</p> <p>Date: _____</p>
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